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COPY

No. 04-721

Supreme Court, U.S.
FILED
JUL 15 2005
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

MIKE EVANS, Warden, *Petitioner,*

v.

REGINALD CHAVIS, *Respondent.*

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 22, 2004
CERTIORARI GRANTED MAY 2, 2005

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The Warden's March 22, 2001 Respondent's Reply to Petitioner's Opposition to Respondent's Motion to Dismiss petition for writ of habeas corpus, filed in United States District Court, Case Number 00-2496 66-97

NOTATION REGARDING LOCATION OF MATERIALS

The following court documents have been omitted in printing this joint appendix because they appear in the appendices to the Petition for Certiorari as follows:

	Appendix
First page of Chavis's November 10, 1997, petition for writ of habeas corpus, reflecting the date filed in the California Supreme Court	F
Findings and Recommendations filed on July 9, 2001, in the United States District Court for the Eastern District	D
Court Order filed on September 20, 2001, in the United States District Court for the Eastern District	C
Opinion in Chavis v. LeMarque, United States Court of Appeals for the Ninth Circuit, Case Number 01-17072 (August 27, 2004), reported at 382 F.3d 921	A
Court Order filed on September 14, 2004, in the United States Court of Appeals for the Ninth Circuit	B

CHRONOLOGICAL LIST OF RELEVANT STATE COURT DOCKET ENTRIES

July 29, 1991	Chavis found guilty by jury of attempted murder and mayhem with related findings of firearm use and great bodily injury in Sacramento County Superior Court in case number CR104529
September 6, 1991	Sacramento County Superior Court sentenced Chavis to state prison for an indeterminate term of life with the possibility of parole
July 30, 1992	California Court of Appeal, Third Appellate District, affirmed the judgment against Chavis in case number C011920
September 4, 1992	Chavis filed a petition for review with the California Supreme Court in case number S028560
October 28, 1992	California Supreme Court denied Chavis's petition for review
May 14, 1993	Chavis filed a petition for writ of habeas corpus in Sacramento County Superior Court in case number 93F04032
July 30, 1993	Sacramento County Superior Court denied the petition in case number 93F04032

August 22, 1994	Chavis filed a petition for writ of habeas corpus in the California Court of Appeal, Third Appellate District in case number C019058
September 29, 1994	Court of Appeal denied the petition in case number C019058
November 10, 1997	Chavis filed a petition for writ of habeas corpus in the California Supreme Court in case number S065691
April 29, 1998	California Supreme Court denied the petition in case number S065691
December 15, 1998	Chavis submitted a petition for writ of habeas corpus in Sacramento County Superior Court in case number 98F10793
January 5, 1999	Sacramento County Superior Court ordered the petition in case number 98F10793 "not filed"
January 25, 1999	Chavis filed a petition for writ of habeas corpus in Sacramento County Superior Court in case number 99F00573
February 24, 1999	Sacramento County Superior Court denied the petition in case number 99F00573
December 17, 1999	Chavis filed a petition for writ of habeas corpus in the California Supreme Court in case number S084374

March 29, 2000	California Supreme Court denied the petition in case number S084374

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES FOR UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA CASE NUMBER CIV S-00-2496

August 30, 2000	Chavis filed a petition for writ of habeas corpus
February 13, 2001	Respondent, Warden Sylvia Garcia filed a motion to dismiss the petition for writ of habeas corpus
March 7, 2001	Petitioner's Opposition to Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus filed by Chavis
March 22, 2001	Respondent's Reply to Petitioner's Opposition to Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus filed by the Warden
July 9, 2001	The Magistrate Judge filed findings and recommendations, recommending that the motion to dismiss be granted and the action dismissed
September 20, 2001	District Court Judge issued order adopting the findings and recommendations, granting the motion to dismiss the petition, and dismissing the case
October 1, 2001	Chavis filed a notice of appeal
October 17, 2001	District Court Judge issued order denying certificate of appealability

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES FOR UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT CASE NUMBER 01-17072

October 23, 2001	Chavis filed a request for a certificate of appealability
April 17, 2002	Request for a certificate of appealability granted by the Ninth Circuit
August 27, 2004	Ninth Circuit filed opinion and entry of judgment reversing the district court and remanding
September 14, 2004	Appellee Warden's motion for a stay of the mandate granted

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE & TIME: 7/30/93 DEPT. NO.: 5
JUDGE : KENNETH G. PETERSON
CLERK : K. NUSSBAUM
REPORTER : BAILIFF :

IN THE MATTER OF
REGINALD A. CHAVIS CASE #93F04032

NATURE OF PROCEEDINGS: PETITION FOR WRIT OF HABEAS CORPUS - **ORDER**

The petition for writ of habeas corpus has been filed and considered.

IT IS ORDERED that the petition for writ of habeas corpus is DENIED.

Petitioner, an inmate at Folsom Prison, alleges that he was wrongly convicted of attempted first degree murder in Sacramento County Superior Court case number 104529. In 1991, both he and a co-defendant, Rick Johnson, were convicted and sentenced to life with a possibility of parole. He has set forth four grounds for habeas corpus relief which are related to his criminal proceeding.

Petitioner first contends that he received ineffective assistance of counsel during his trial. Second, he asserts that the trial court abused its discretion by allowing the prosecution to argue an improper motive for the offense. Third, he maintains that the prosecution used false and perjurious testimony. He claims that the prosecution knew that the testimony of the victim, Rhonda Haines, was false, and failed to inform the trial court of it. Finally, he states that there was insufficient evidence to support his conviction.

Petitioner has failed to plead a prima facie case for relief in support of any of these claims. (In re Bower (1985) 38 Cal.3d 865, 872.) The Court, therefore, denies the petition. Petitioner's four claims are addressed within the following two subsections.

A. Petitioner Has Failed to Plead a Prima Facie Case of Ineffective Assistance of Counsel.

Generally, petitioner first alleges that his attorney failed to investigate potentially meritorious defenses. He further alleges that his attorney failed to call witnesses who could have provided exculpatory evidence.

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TITLE: REGINALD A. CHAVIS
NATURE OF PROCEEDINGS: _____
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1. Petitioner's Attorney Did Not Render Ineffective Assistance of Counsel by Failing to Investigate the Alleged Statements of Eldra Jackson III.

Petitioner asserts that his attorney failed to investigate the statements of Eldra Jackson III. Jackson informed petitioner that he had accompanied the victim, Rhonda Haines, during transport to the courthouse. He was also kept in the same holding cell with her. She told him that she was falsely stating that petitioner was her assailant. She also told him that she wanted to put it all on petitioner, and hoped that the co-defendant got off. Petitioner told his attorney about Jackson's statements, but the attorney refused to investigate it.

Petitioner has failed to establish a prima facie case of ineffective assistance of counsel in regard to this claim. In Strickland v. Washington (1984) 466 U. S. 668, the United

States Supreme Court set forth the standard for evaluating claims of ineffective assistance of counsel. For purposes of a habeas corpus pleading, a petitioner must establish a prima facie case that:

1. counsel's performance was deficient; and

2. petitioner ' s defense was prejudiced by the performance.

(Strickland v. Washington, supra, at 687.)

Petitioner has failed to satisfy either one of these requirements. The Court is skeptical of his factual allegations regarding Jackson's statements. After his conviction, he requested that the trial court permit him to represent himself because his attorney had rendered ineffective assistance of counsel. He made no reference to Jackson or his attorney's failure to investigate Jackson's possibly exonerating testimony. (See the transcript of petitioner's Faretta-Marsden hearing, dated September 4, 1991, currently under seal with the Third District Court of Appeal.) His failure to present this claim at his post-trial Faretta-Marsden motion hearing suggests that he has subsequently manufactured it.

Furthermore, petitioner has not provided any statement or declaration executed by Jackson. Jackson was a male inmate while Haines was a female one. It seems implausible that law enforcement would transport male and female inmates together from the jail to the courthouse. It seems equally

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implausible that it would house them in the same holding cell pending their hearings.

Even if petitioner did inform his attorney of Jackson's statements, his attorney did not render ineffective assistance of counsel by failing to investigate them. His attorney cannot be said to have been deficient for failing to further investigate such an unlikely story. The Court therefore finds this argument in support of his ineffective assistance of counsel claim unpersuasive.

2. Petitioner's Attorney Did Not Render Ineffective Assistance of Counsel by Failing to Challenge the Credibility of Haines in the Manner Petitioner Suggested.

Petitioner further alleges that his attorney failed to cross-examine Rhonda Haines about her contradictory statements concerning the offense. At the preliminary hearing, an officer related from a police report that she stated that petitioner shot her with a handgun. She additionally stated that the co-defendant shot her with a shotgun. At trial, Haines testified that petitioner shot her with a shotgun. She stated that the codefendant did not shoot her or make any threatening statements. Petitioner contends that his attorney should have confronted her about these false statements.

Petitioner contends that Haines was attempting to exonerate the co-defendant and implicate petitioner as Jackson had told him. Petitioner has attached copies of pages of two police reports to the petition. They record interviews of her conducted by Detective Edwards on March 12, 1991, and March 14, 1991, two and four days after the incident. (See Exhibits B and C, attached to the petition.) In each of them, Edwards stated that she said that she was shot by someone named "Rick" or "Mike Hayes" as well as "Reggie Taylor". Apparently, "Mike Hayes"

is an alias of the co-defendant while "Reggie Taylor" is an alias of petitioner. Haines testified that she did not know the defendant by the name of "Mike Hayes". (See RT 280 of the trial transcript, attached to the petition.) Again, petitioner contends that his attorney would have challenged her credibility on this issue. His attorney did not do so.

Petitioner states that his defense was based upon two theories: (1) alibi; and (2) the victim, Haines, was lying. In support of his defense, there was evidence that she was coherent when she initially told a paramedic that she had been shot by "A. J." and "Rick Hammit". A

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reasonably competent attorney would have emphasized this evidence, but his attorney did not. It would have refuted the prosecution's claim that the paramedic misunderstood what Haines actually said.

As already noted, Haines spoke with Detective Edwards two days after the incident on March 12, 1991. Petitioner asserts that she attempted to implicate him by providing a false statement. She stated that all three of them, petitioner, the co-defendant and herself, stopped at the residence of Glenda Williams. They learned about a police investigation. Petitioner and the co-defendant then "took off". (See Exhibit E, attached to the petition.)

Petitioner states that Haines recanted these statements when she testified after Williams stated to the contrary. He asserts that she made up the episode concerning the money orders to establish his motive for the crime. He maintains that he did not

see her again after dropping her at Williams' residence. His attorney failed to impeach Haines in regard to this issue. Petitioner states that he might have been acquitted if his attorney had done so.

The Court also finds these arguments in support of petitioner's ineffective assistance of counsel claim unpersuasive. He raised these issues in a post-trial Faretta-Marsden hearing on September 4, 1991. His attorney stated the inconsistencies were irrelevant. First, he said that petitioner's defense was that he was not at the crime scene. Any inconsistencies related to whether petitioner or the co-defendant shot Haines were not pertinent. Second, Haines made many of her statements while under deep medication. There was, therefore, a rational explanation for any inconsistent statements that she provided during this period. Judge Tochterman ruled that petitioner's complaints about the adequacy of his representation were frivolous. Petitioner's problem was that Haines was a very credible witness whom the jury believed. (926, 927.)

Petitioner's allegations do not satisfy the ineffective assistance of counsel standard set forth in the Strickland decision. In Strickland, the court noted that counsel is granted wide latitude in making tactical decisions. There is a presumption that a challenged tactical decision is considered sound trial strategy. Strategic choices made after a thorough investigation of the law and facts are virtually unassailable. (Strickland, supra, at pp. 689, 690.)

In this case, petitioner's attorney provided logical reasons for refusing to challenge the credibility of Haines in the manner petitioner suggested. Some of his suggested inconsistencies were incompatible with his alibi defense. Others were effectively explainable because Haines was

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heavily medicated when she made the statements. His attorney, therefore, made informed strategic choices which cannot be subsequently challenged as evidence of ineffective assistance of counsel.

3. Petitioner's Attorney Did Not Render Ineffective Assistance of Counsel by Failing to Request a Limiting Instruction.

Finally, petitioner alleges that the prosecution introduced evidence of drug trafficking by the co-defendant and Rhonda Haines. His attorney failed to make a limiting instruction despite a complete lack of evidence connecting him to such activity. In fact, the trial court admitted the evidence in such a manner so as to preclude the issuance of any such instruction. His allegation arises from an error contained in his appellate decision. The Court finds, however, that a petition for writ of habeas corpus is not the appropriate means for addressing this problem.

In its decision, the Third District Court of Appeal stated that the drug trafficking evidence only applied to the co-defendant. Petitioner's attorney could only request a limiting instruction under such circumstances. (See pp. 19 and 20 of the Third District Court of Appeal's decision, dated July 30, 1992.) But at trial, however, the trial judge, Judge Tochterman, explicitly permitted the prosecution to introduce such evidence for the purpose of establishing a motive for both petitioner and the co-defendant. (See RT 214-228, 232, 233, 236, 242-245 of the trial transcript, attached to the petition.)

The trial court specifically permitted the prosecution to introduce the following evidence of the drug transaction: After leaving Williams' residence, Haines found both petitioner and the co-defendant at a friend's apartment. The co-defendant said he did not have time to talk to her because he and petitioner were "going to take care of business." They left, and later returned with a long rifle. The prosecution introduced evidence of prior episodes of drug dealing involving Haines and the co-defendant to support an inference that both petitioner and the co-defendant left to transact a deal. (See pp. 2 and 3 of the appellate decision in this proceeding.)

Petitioner and the co-defendant planned to go to Stockton, and Haines pleaded to go with them. They relented. Petitioner began to accuse her of cooperating with the police. Both stated that they did not intend to go to jail "behind that bitch". Petitioner shot her after the co-defendant was unable to do so.

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Judge Tochterman provided the following reasons for permitting the prosecution to introduce evidence of prior drug dealing: (1) Petitioner and the co-defendant said that they were leaving to take care of business when they left Haines for about a half hour; (2) They refused to permit her to accompany them; and (3) Subsequent statements of the petitioner and the co-defendant about not being jailed because of Haines suggested that they believed that she could provide evidence of their drug dealing to the police. (See RT 242-245 of the trial transcript, attached to the petition.)

Based upon the foregoing factual summary, the Court must deny petitioner's claim regarding his attorney's alleged

ineffective assistance of counsel for failing to request the limiting instruction. It is evident that the trial court would have denied any such request. An examination of the trial transcript indicates that Judge Tochterman permitted the prosecution to introduce the evidence expressly for the purpose of showing petitioner's motive.

Petitioner's current claim is, therefore, the inevitable consequence of the appellate court's misreading of the record. His attorney could not seek a limiting instruction because Judge Tochterman explicitly permitted the introduction of the evidence to show his motive. He cannot, however, seek to confront this problem by means of a petition for writ of habeas corpus. His appellate counsel filed a petition for review with the California Supreme Court which was denied on October 28, 1992. His attorney should have addressed this issue in that pleading if he did not do so. Petitioner cannot utilize a petition for writ of habeas corpus as a second appeal regarding it. (In re Terry (1971) 4 Cal.3d 911, 927.)

B. Petitioner Has Also Failed to Plead a Prima Facie Case for Relief in Support of His Remaining Three Claims.

Petitioner has presented three additional claims for habeas corpus relief. First, he asserts that the trial court abused its discretion by allowing the prosecution to argue an improper motive for the offense. Second, he maintains that the prosecution used false and perjurious testimony. He claims that the prosecution knew that Rhonda Haines' testimony was false, and failed to inform the court of it. Finally, he states that there was insufficient evidence to support his conviction.

DATE : 7/30/93 , 19 ___ COURT MET AT _____
TITLE: REGINALD A. CHAVIS
NATURE OF PROCEEDINGS: _____

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The Court denies all three of these claims. In regard to his first claim, he contends that the trial court improperly permitted the prosecution to argue that he shot Haines because he feared being arrested for drug dealing. The Court denies this claim because petitioner had the opportunity to raise this issue on appeal. A petition for writ of habeas corpus should not be used as a second appeal. (Terry, supra; In re Walker (1974) 10 Cal.3d 764, 773.)

In regard to his second claim, petitioner contends that the prosecution introduced false and perjurious testimony against him at trial. He asserts that Haines provided false testimony about his participation in the shooting. He further asserts that the prosecution presented her testimony with knowledge of its falsity.

The Court must also deny this claim. Petitioner has not established that Haines' testimony was false. Nor has he established that the prosecution knew of its falsity. He must establish both before he has established a prima facie case of this type of prosecutorial misconduct. (Napue v. Illinois (1959) 360 U. S. 264, 269; Brown v. Wainwright (11th Cir. 1986) 785 F.2d 1457, 1464-1466.) He has merely recited the inconsistencies in Haines' statements about the offense that he presented in regard to his ineffective assistance of counsel claim. Her inconsistent statements do not necessarily indicate that she provided false testimony. After the trial, Judge Tochterman stated that she was a credible witness.

Finally, petitioner contends that the prosecution introduced insufficient evidence to support his conviction. He states that his conviction was based upon the perjurious testimony of Haines. The Court denies this last claim for habeas corpus relief. As already noted herein, he has failed to establish that

Haines provided false testimony. Furthermore, he should have instead pursued this claim on appeal. Again, a petition for writ of habeas corpus should not be used as a second appeal. (Terry, supra; In re Walker (1974) 10 Cal.3d 764, 773.)

DATED: July 30, 1993

CC: Reginald A. Chavis, H08159
FOLSOM STATE PRISON
PO BOX 29
REPRESA, CA 95671

/s/
JUDGE OF THE SUPERIOR COURT

BOOK:
PAGE :
DATE:
CASE NO. : 93F04032
CASE TITLE:
DISTRIB. :
re:kmr

SACRAMENTO SUPERIOR COURT

BY /s/
Deputy Clerk

FILED
SEP 29 1994
Court of Appeal-Third District
Robert L. Liston, Clerk
By _____/s/_____ Deputy

**IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT**

IN RE REGINALD CHAVIS, ON HABEAS CORPUS
Petitioner

3 Crim. C019058
Sacramento

By the Court:

The petition for writ of habeas corpus is denied.

Dated: September 29, 1994

/s/
PUGLIA, P.J.

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cc: See Mailing List

Selected Pages of Chavis's November 10, 1997 Petition for Writ of Certiorari and Attached Exhibits, Filed in the California Supreme Court, Case Number S065691

12. Other than direct appeal, have you previously filed any petitions, applications, or motions with respect to this conviction, commitment, or issue in any court?

__X__ Yes. If yes, continue with number 13.

_____ No. If no, skip to number 15.

13. (1) Name of court Superior Court of the State of California

Nature of proceeding (for example, "habeas corpus petition") Habeas corpus petition

Issues raised: a. Ineffective assistance of counsel
b. Abuse of discretion
c. Prosecutorial exploitation of perjury
d. Insufficient evidence

Result (*Attach order, if available*) denied (attached)
Date of decision July 30, 1993

(2) Name of court Court of Appeals Of The State Of California (Third Appellate District)

Nature of proceeding Habeas Corpus Petition

Issues raised: a. Erroneous Denial of Severance
b. Exclusion of relevant evidence
c. Ineffective assistance of counsel
d. Prosecutorial misconduct
e. Insufficient evidence

f. Ineffective assistance - Appellate Counsel

Result (*Attach order, if available*) denied; attached
Date of decision September 29, 1994

For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result.

N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

Your petitioner is a layman of law and was illegally and actively being denied access to the court by the prison petitioner is confined. Your petitioner was granted an intrainstitutional appeal to attain access to the court. (See Exhibit 1)

16. Are you presently represented by counsel?

____ Yes. __X__ No. If yes, state the attorney's name and address, if known.

Your petitioner is in propria persona

17. Do you have any petition, appeal, or other matter pending in any court?

____ Yes. __X__ No. *If yes, explain.*

N/A

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court.

N/A

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: /s/
(Signature of Petitioner)

EXHIBIT 1

SUPPLEMENT PAGE

RE: California State Prison-Sacramento (SAC)
Second Level Reviewer's Response
Appeal Log #: SAC-C-95-03353
Date: February 8, 1996

/s/
Inmate: Chavis, H-085159 FEB 16 1996

APPEAL ISSUE: (Modified)
Legal

APPEAL DECISION:

PARTIALLY GRANTED (MODIFICATION ORDER)

APPEAL RESPONSE

K. L. Markey, Appeals Coordinator, was assigned to investigate your appeal at the Second Level of Review.

All submitted documentation and supporting arguments have been considered, including the interview conducted at the First Level of Review (FLR). Additionally, a thorough investigation has been conducted regarding the claim presented by you and evaluated in accordance with SAC's Operational Procedures (OP's) and the California Code of / Regulations (CCR), Title 15.

SUMMARY OF APPEAL

You contend that you wish to utilize Excused Time Off (ETO) to go to the Law Library, or you wish to receive a job change to a Third Watch position in order to accommodate your Law Library access.

SUMMARY OF INVESTIGATION

The Department's rule regarding use of ETO is contained in the California Code of Regulations (CCR), Title 15, Section 3045.2.

The First Level Reviewer has informed you that the use of ETO does not include an inmate's desire to utilize the Law Library. However, you will be referred to the Unit Classification Committee (UCC) who shall review your job assignment, and make a determination concerning your placement in a Third Watch work position.

CALIFORNIA STATE PRISON - SACRAMENTO
APPEAL LOG # SAC-C-95-03353
CHAVIS, H-08159
February 8, 1996
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APPEAL RESPONSE

For the reasons cited above, your appeal is **PARTIALLY GRANTED**. The Appeal's Office will prepare a **MODIFICATION ORDER** instructing the C-Facility Captain to have you appear before the Unit Classification Committee (UCC). UCC will determine whether you can be assigned to a Third Watch work position to accommodate your needs for use of the Law Library.

/s/
THEO WHITE
Warden

TW:km
cc: Inmate Appeals Unit
Central File

State of California Department of Corrections

INMATE/PAROLEE
APPEAL FORM
CDC 802 (12/87)

Location:	Institution/Parole Region	Log No.	Category
1.	CSP-SAC	1. 95-03353	10
2.	Sac-C	2.	Library access-ETO

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Chavis	H-08159	PTR.060	C 7115

A. Describe Problem: This inmate is assigned to the above stated position as a seven block (tier tender), with stipulated RDO's being Sun/Mon. I am currently without a hired attorney but, I work pro-per on my criminal case and I am in the process of attempting to pursue a filing of a habeas corpus petition on my criminal conviction. In order to complete my petition it is necessary for me to get into C-facility's law library to research and obtain the required law, points and authorities to validate my filing. My problem is that the law library is closed on Sun/Mon, which, (refer to attachment)

If you need more space, attach one additional sheet.

B. Action Requested: That I be granted use of excused time off in accord to Section 3045.2 (2)(G)(5) of the Title 15, in two hour increments 5 days weekly after finishing my assigned duties, to have reasonable access to the law library as soon as possible.

Inmate/Parolee Signature: /s/ H-08159
Date Submitted: 12-12-95

C. INFORMAL LEVEL (Date Received:_____)
Staff Response: See attached

Staff Signature: See attached
Date Returned to Inmate: _____

D. FORMAL LEVEL
If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

My superior says that he can't grant me ETO. However, in accord to 3045.2 (2)(G)(5) the lieutenant or high authority can do so. Please do so, so that I may continue good programming as per CDC's expectations for me to work an assignment. A-1-A unassign me or change me to a PM assignment A.S.A.P. Thank-you.

Signature: /s/ H-08159
Dated Submitted: 12-19-95

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-TE, Inmate Claim

RECEIVED
DEC 22 1995
CSP-SAC

Inmate Appeal Continued

incidently are also my assigned RDO's. The library closes at about 1:45 p.m. during it's open days of the week, and this inmate is not permitted to be relieved from duty until 1:30 p.m. I have no reasonable access to the law library. I have discussed this problem with c/o Fender who supervises me, and he advises me that he can not relieve me from duty to go to the library regardless of the circumstances.

I asked that I be granted use of (ETO) in accord to section 3045.2 (2)(G)(5) of the title 15, which indicates that (ETO) may be used for "non-routine recreation and entertainment activities" and c/o Fender denied me that request.

This inmate can not get a PLU status without filing the proper documents to the court and, I can not file the proper documents to the court without reasonable access to the law library for required case law, points and authorities.

I have tried to convieniently resolve this situation in several ways before taking this action:

(1) I have asked and talked to c/o Fender, my supervisor.

(2) I have written the law librarian and asked for PLU status as a result of my sitution, to which I never received a response.

(3) I also submitted a Job Change application which was approved over a month ago but never occurred for reasons unknown.

To Second Level

My supervisor says that he can not grant me ETO for use of the access to law library however, in accord to the above cited title 15 section the lieutenant and higher authority can. I would request that it be granted of me so that I can get my legal business handled and still conform to CDC's programming of continuing to work my assignment. If I can not be granted ETO, please unassign me from this position to A-1-A unassigned or change me to a

State of California

MEMORANDUM

Date: January 12, 1996

To: Inmate Chavis (H-08159)

From: California State Prison-Sacramento, Represa 95671

Subject: APPEAL LOG # SAC-C-95-03353 (FIRST LEVEL RESPONSE)

SUMMARY OF APPEAL

You wish to utilize the services of the C Facility Legal Library. Unfortunately, the library hours of operation coincide with your assigned work hours. You are requesting use of ETO time during your work hours to go to the library.

SUMMARY OF INVESTIGATION

On January 12, 1996, you were interviewed and an investigation was conducted by this writer regarding the above-noted appeal. During my investigation I found that use of ETO time is not an option for you in this circumstance. California Code of Regulations, Title 15, Section #3045.2 specifies authorized use of ETO time. Access to the Legal Library is not listed, nor is it considered a "non-routine recreation and entertainment" activity, as you suggest.

You best option at this point is to request a work assignment change that would allow access to the Legal Library as a GLU.

APPEAL RESPONSE

For the reasons cited above your appeal is DENIED.

/s/
B. MCJUNKIN
Program Sergeant, 2/W
C Facility

BM:lj

RECEIVED
JAN 17 1996
CSP-SAC
APPEALS OFFICE

State of California

MEMORANDUM

FORMAL RESPONDENT c/o Fender

Date: 12-13-95

To: Inmate Chavis H-08159
(NAME) (CDC#)

From: California State Prison-Sacramento, Represa 95671

Subject: INFORMAL LEVEL APPEAL
UNIT LOG # 1295 C-921

Appeal is (indicate one) GRANTED / PARTIALLY GRANTED / **DENIED** / OTHER

On 12-14-95 you were interviewed by c/o Fender regarding the following issue(s):

You requested ETO to go to the law library.

An investigation of your complaint revealed the following:

I cannot grant ETO for you to go to the law library.

The following person(s) was/were interviewed in the course of the investigation:

_____ _____
Respondent Signature Printed Name

S065691

IN THE SUPREME COURT OF CALIFORNIA

IN RE REGINALD A. CHAVIS

ON

HABEAS CORPUS

Petition for writ of habeas corpus is DENIED.

SUPREME COURT
FILED
APR 29 1998
Robert Wandruff Clerk
/s/
DEPUTY

/s/
Chief Justice

S084374

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

IN RE REGINALD A. CHAVIS

ON

HABEAS CORPUS

Petition for writ of habeas corpus is DENIED. (*In re Clark* (1993) 5 Cal.4th 750; *In re Robbins* (1998) 18 Cal.4th 770, 780; *In re Dixon* (1953) 41 Cal.2d 756, 759.)

SUPREME COURT
FILED
MAR 29 2000
Frederick K. Ohlrich Clerk
/s/
DEPUTY

/s/
Chief Justice

REGINALD CHAVIS H-08159
P.O. BOX 5002
CALIPATRIA, CALIFORNIA
92233-5002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

In re the matter of:	)Case No.:
	) C1V. S-00-2496WBSGGH-P
REGINALD CHAVIS,	)
Petitioner,	) **PETITIONER' S**
V.	) **OPPOSITION TO**
SYLVIA GARCIA, WARDEN,	) **RESPONDENT'S**
Respondent	) **MOTION TO DISMISS**
	) **PETITION FOR WRIT**
_____	) **OF HABEAS CORPUS.**

I Reginald Chavis, make this opposition to respondents "MOTION TO DISMISS" this petition for writ of habeas corpus, and allege as follows:

I.

Federal habeas corpus review is appropriate and required, in this case,

II.

Petitioner is actually innocent; federal habeas corpus review is required to correct the constitutional violations that has resulted in the conviction of one who is actually innocent,

III.

This petition should not be dismissed, as it is not barred by 28

U.S.C. Section 2244 (d) (1) and (2), it is not untimely,

IV.

Petitioner is in custody, and detained illegally, pursuant to the invalid judgment of the State court, obtained in violation of the constitution, laws, and treaties of the United States,

V.

Petitioner agrees his state remedies have been properly exhausted,

VI.

Petitioner agrees with respondents I thru V, recital of historical facts recapped. Petitioner agrees with respondents VI recap, except for his contention that the application was "denied". In actual fact the petition was ordered, "NOT FILED" by the court as a result of petitioner's error to the Judicial Counsel Form,

VII.

Petitioner agrees with respondent's VI thru X as stated,

VIII.

Petitioner denies respondent's number XI, because respondent alleges petitioner's application is barred by the one-year statute of limitations of 28 U.S.C. section 2244 (d) (l) and (2)

IX.

Petitioner contends the application is properly filed under 28 U.S.C. section 2244 (d) (1) (B) and, (2). That is, state action in

violation of the constitution prevented petitioner from filing, by such state action; and because, under the unusual circumstances of this case, petitioner believes the limitation period does not bar petitioner from Federal Habeas Corpus relief

X.

If petitioner has exceeded the limitation period, the responsibility for that must be imputed to the State under the rationale of Coleman V. Thompson,

XI.

Extraordinary circumstances exist in this case, which justify Federal Habeas Corpus review, even if petitioner has inadvertently violated the period of limitations; in order to correct a fundamental injustice, violative of petitioner's fundamental liberties.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS.

ARGUMENT

Respondent's motion to dismiss should be denied. Respondent argues that petitioner's direct review became final on January 26,1993. Therefore, his federal petition was due one year from the enactment of the AEDPA, April 23,1997, plus any applicable tolling time, but that there are no tolling considerations to petitioners case. (Respondent's motion pp. 7-8)

However, petitioner contends that due to state created impediments before, and after, the existence, and enactment date of the AEDPA, petitioner is not barred from Federal habeas review, and petition is not untimely.

A. STATE CREATED IMPEDIMENTS

1). Before the existence of the AEDPA, or the enactment date, petitioner was being detained at Folsom State Prison. Petitioner had not yet exhausted his state remedies; he'd only filed habeas corpus to the Sacramento County Superior Court. Some time after the denial of that petition, petitioner was assigned prison duties. Petitioner was required to perform these duties 5 days weekly, on 7 and a half hour shifts per day - on the exact days and time which only, the law library (where petitioner would have access to necessary materials and information) was available to inmates. Petitioner was unable to have access to necessary materials and information needed, as custody refused to allow petitioner access to the law library. However, petitioner made efforts continually, to go forward with his collateral efforts without the access. Remaining confused and unable to understand the many technical matters confronting him, petitioner applied to the Appellate District on August 22,1994. As respondent notes, it was denied on September 29,1994.

At that time, however, petitioner's custodians continuously disallowed petitioner access to the prisons law library. Petitioner was indigent, without counsel, and without the means to get books to aid him. However, his filing of the inartistically drawn 1994 petition evidences petitioner continued to try to exhaust his state remedies in a timely manner, as the effort was made without the access. Petitioner's mother, Rosetta Seabrooks, aided petitioner by typing the document.

Being aware that he had been insufficiently and inadequately prepared before the last effort was made to the California Appellate District, and before custody would allow petitioner the needed access to the necessary materials and information--via allowing access to the law library, which could enable petitioner to present a correct and meaningful application--petitioner decided against risking, further, aggravating his predicament by again attempting to go forward with filing

another application with "guess work". Petitioner would try to persuade custody to allow him the access that he needed, first. Petitioner had no recourse to aid him in learning the proper legal bases, and grounds to assert, in support of his claims. Petitioner is a layman of law, and did not know of them. Finally, another inmate advised petitioner that custody's acts was an illegal deprivation of **access to the courts**, and that petitioner should pursue an administrative grievance. That was in December 1995. It was denied repeatedly, before February 1996, when petitioner finally was granted a partially favorable decision, which was not enacted before at least another month was passed. (The decision was to have petitioner reassigned to other duties that would allow petitioner access to the law library.)

The results are affected here because the state created obstacle upheld and halted petitioner's efforts to exhausting his state collateral actions, which would have been exhausted before the creation and enactment of the AEDPA, but not for custody's acts. Therefore, petitioner submits that the state's actions were directly responsible for petitioner's decision not to risk further aggravation to his predicament by going forward with an unmeaningful and improperly constructed application to the California Supreme Court. (This was a sensible decision petitioner made before the existence of the AEDPA). Petitioner was unable to have custody's actions changed before April 1996, therefore, at the time of the enactment date of the AEDPA (which petitioner was not even aware of at that time) not only was petitioner not suited to pursue a Federal application, but only barely ready to begin preparing his petition to the California Supreme Court. Petitioner asserted the state impediment as explanation to excuse any delay to his application to the Supreme Court, to his 1997 petition, and affixed the administrative grievance (affixed as exhibit 1 to this document).

2). After petitioner was allowed access to the law library, again petitioner's efforts to making the application to the California Supreme court were upheld, as a result of extended lockdowns

at the Folsom Prison facility. The year 1996 at Folsom State Prison saw a series of lockdowns. Petitioner does not have access to State record. However, in addition to the lockdowns in 1996, which came before it, the most recent in memory came in October 1996. The "C" facility on which petitioner was confined was put on lockdown continuously clear into February 1997, due to a riot that occurred on the neighboring "B" facility. The "C" facility then remained relatively lockdown free until August 11,1997, when an inmate workstrike precipitated another lockdown. The lockdown lasted throughout August and September due to reprisals taken against "strike breakers" shortly after every release. The remainder of 1997 saw numerous lockdowns due to gang violence.

For the foregoing reasons, petitioner contends that these were impediments created by the state. Therefore, petitioner contends that under the unusual circumstances of this case, where the state is responsible for halting petitioner's diligence to pursuing **meaningful** collateral pursuit of his claims, before it's existence, and not corrected until just before the enactment of the AEDPA, that the clock was "paused" for petitioner immediately after it's enactment date, until such time that petitioner was able to file his petition to the State Supreme Court of California, November 10,1997, where petitioner would have exhausted his state remedies before the existence of the statute, but not for the state's impediments.

If the Court does not allow for the pause in such a case, then it will "attach new legal consequences to events completed before (AEDPA's) enactment", contrary to the standard of CALDERON v. UNITED STATES DISTRICT C0URT (BEELER) 128 F3d. 1283, at 1287. The court also would allow the state to effectuate a neat and final escape from all responsibility for it's impediments, and petitioners would be penalized for the state actions which created delay to the diligence of claim pursuits.

Therefore, petitioner contends that his one-year clock could not begin to run before the filing of his Supreme Court petition,

or until after the denial of that petition, as the clock does not run when a petition is " FILED". (BEELER) Petitioner filed his first petition for post conviction relief on May 14, 1993, over three years before the existence of the (AEDPA). On August 22, 1994, petitioner filed for writ of habeas corpus with the California Court of Appeal. On September 29, 1994, the petition was denied. The statute remains tolled during the pending interval when petitioner is exhausting his state remedies. Therefore, on November 10, 1997, when petitioner filed his habeas corpus with the California Supreme Court, (AEDPA's) time period was tolled during the interval between the state court's disposition from the California habeas petition to the next level Court of Appeal to the filing of the state -The California Supreme Court. NINO V. GALAZA 183 F 3D. 1003 (9th CIR. 1999).

The date of APRIL 28, 1998, the California Supreme Court denied the petition.

ADDITIONAL TOLLING OR PAUSING CONSIDERATIONS.

There were more tolling and/or pausing considerations after the date of April 29, 1998, however. The Folsom State Prison was on emergency lockdown at the time that the California Supreme Court denied petitioners application. After being removed from that lockdown, on June 5, 1998 a melee' involving in excess of 75 white, black, and Hispanic inmates erupted on the exercise yard. The incident precipitated a lockdown that lasted well into August 1998. However, it should he noted that petitioner continued to take steps to help himself during that period. Petitioner gained the aid of two inmates, Joseph Hunt, and Allen Adams, while on the lockdown who were housed in nearby cells. These inmates helped petitioner learn of the proper **legal bases'** supporting petitioner's claims which petitioner had not known before. Petitioner's acquaintances helped petitioner with preparing two different

motions (the first-approximately June 27, 1998, and another September 2, 1998 because the state court failed to answer the first) which eventually succeeded in acquiring for petitioner the first "in camera" MARSDEN proceeding of April 29, 1991, where petitioner was first denied substitution of counsel. The Superior Court of Sacramento granted said second motion, on September 21, 1998, ordering that "the transcript be provided to petitioner after [paying] the cost of said transcript". Petitioner arranged to have his mother, Rosetta Seabrooks, pay the cost, and petitioner received his duplicate October 11, 1998. [In petitioner's previous applications to the state courts, unable to recall the specific factual occurrences of the before proceeding, petitioner basically referred to the fact that he had wanted to dismiss counsel but that it was denied. Petitioner explained that the proceeding was "unavailable" to him.] After learning of these proper bases', petitioner wondered about if they were adequately presented to the state courts (as petitioner already had asserted the previous bases without benefit of having the proceeding, and a "new light" was cast with the receipt of it), so as the "exhaustion" requirement was still satisfy to allow proper application for a Federal application. Receiving the specific facts from the hearing, and learning the proper legal bases, prompted petitioner to return to the state courts with a new properly grounded petition. These resulted in petitioner's applications of December 15, 1998, (ordered "not filed" on January 5 1999 due to petitioners error to the judicial counsel form, corrected and re-filed on January 25, 1999. It was denied February 24, 1999, but the decision was not mailed to petitioner due to state court error which was not corrected until the amended order of April 15, 1999, and petitioner did not know of the denial before that date. Petitioner was unable to complete his ongoing investigation for the filing of his second application to the California Supreme court before November 1999, -- due to more lockdowns while at the Folsom State Prison; and also, involuntarily and unexpectedly, petitioner was transferred away from Folsom to Calipatria State Prison where petitioner

presently is detained. Petitioner arrived to this institution in a state of lockdown and was separated from his personal property for a period of two months, and was unable to work on his situation.

After Calipatria custody finally re-issued petitioner his property, petitioner filed a "MOTION TO VACATE [PREVIOUS ORDER] WITH LEAVE; TO FILE A NEW PETITION" to the Supreme Court of California. Petitioners ongoing investigation uncovered that this was the procedure petitioner should first employ before filing a second or successive petition to the court, for newly discovered claims or newly learned legal bases to already known claims, in order to avoid a procedural default ruling. The answer to said motion was a letter to petitioner from the clerk of the court (affixed to this document as exhibit 2) stating that "no action may be taken on your motion to vacate ... The order of this court filed April 29, 1998, denying your petition for writ of habeas corpus was final forthwith and may not be amended or reconsidered". However, petitioner had learned that was the preferred procedure to follow from IN RE CLARK the superior court had cited in denying the second petition that petitioner had filed to it. On December 17, 1999, petitioner was able to file the second petition with the California Supreme Court. On March 29, 2000, the petition was denied.

Petitioner contends that he is within the statute of limitations of 28 USC section 2244 (d) (1) and (2), with proper considerations given to pausing the clock and/or equitable tolling, as a result of repeated state created impediments with which petitioner was encountered. Petitioner contends that his constant actions demonstrate his intent to be timely, without wanting to bypass or violate State or Federal procedural rules which petitioner was not familiar.

The court, in BENNETT V. ARTUZ 199 F.3D 116, 120 tells us that "A state court petition is 'pending' from the time it is first filed, until finally disposed of and further appellate review is an available under the particular state's procedures". MILLER V.

MARR, 141 f3D. 976, 978 (10th Cir. 1998) "The one year time period begins to run in accordance with **individual circumstances, that could reasonably affect** the availability of the remedy, but requires inmates to diligently pursue claims" at 978 (internal citations omitted) (citing CALDERON V. UNITED STATES DISTRICT COURT 128 F3d. 1283, 1289 (9TH CIR. 1997) (EN BANC), TAYLOR V. LEE, 186 F 3D. 557, 561, (holding that "the entire period of state post conviction proceedings, from initial filing, to final disposition by the highest state court ... is tolled from the limitations period"), NINO, 183 F 3D., AT 1004 (HOLDING THAT "THE TIME TOLLED FOR EXHAUSTION OF STATE REMEDIES PURSUANT TO 28 U.S.C. 2254 (D) INCLUDES THE INTERVAL BETWEEN THE DISPOSITION OF ... A POST CONVICTION PETITION AND THE FILING OF AN APPEAL AT THE NEXT LEVEL"); BARNETT V. LEMASTER, 167 F 3D 1321, 1323, (10 TH CIR. 1999) (holding that term **"pending" must be construed "to encompass all of the time during which a state prisoner is attempting, through proper use of state procedures, to exhaust state court remedies with regard to a particular post conviction application.")**

Petitioner contends that he is within the statute of limitations of 28 US section 2244 (d) (1) and (2) with the proper considerations to pausing of the clock and/or equitable tolling, as a result of the repeated state impediments which petitioner encountered.

B. IF ANY DEFAULT HAS OCCURRED, RESPONSIBILITY FOR THAT SHOULD BE IMPUTED TO THE STATE.

Petitioner contends that he is aggrieved by state impediment that has not yet been removed - that is, the state's responsibility for insuring that petitioner's right to proceed to trial, and to all "critical stage proceedings" represented, and by the effective

assistance of counsel. Petitioner contends that where the state has failed to satisfy it's responsibility to this requirement, the responsibility for any procedural default, if any has occurred here, must be imputed to the state under the rationale of COLEMAN V. THOMPSON, (1991) 501 U.S. 722, 754, 115 Led. 2d 640, 672, 111 S.Ct. 2546, where the UNITED STATES SUPREME COURT tells us that attorney error, arising at trial or at the level of petitioner's first appeal of right, which is grave enough to constitute ineffective assistance of counsel in violation of the Sixth Amendment "requires that the responsibility for the default be imputed to the state". In such an instance, any procedural default must be seen as an "external factor", i.e., "imputed to the state".

The AEDPA specifically makes an "impediment to filing an application, created by state action in violation of the laws of the United States" cause for setting aside a default on the one-year period of limitations. Here petitioner contends that:

1). Petitioner was forced to proceed to trial with the public defender with which he was unable to communicate, creating more personal conflicts, and that his counsel's ineffective assistance as alleged in petitioner's habeas application and the sworn declaration attached thereto, left petitioner deprived of his fundamental liberties, and was a lapse that must be imputed to the state.

2). On the unique facts of this case, it constitutes non-performance of the defense function and points to such a breakdown in the adversarial process as to make any showing of prejudice unnecessary, (See UNITED STATES v. CHRONIC 466 U.S. 648, 80 L.ED. 2ND 657, 101 S.Ct. 2039 (1989)).

3). That the impediment created by the states violation of petitioner's Sixth Amendment right to the effective assistance of trial and appellate counsel was not removed.

If this court does not recognize the above as an exception to AEDPA's 1-year period of limitations in this case, (where petitioner contends he is actually innocent), then it will have countenanced State action in violation of the constitution

resulting in a suspension of petitioner's Federal right to seek relief under 28 U.S.C. section 2241-2254. (U.S. Constitution, Article I, section 9, Clause 2). Petitioner is a layman of law. Petitioner had a tenth grade (equivalent) level of literacy. It is literally inconceivable that a person of his capacity and education, burdened with the limitations and circumstances attendant to a level-4 institution in California's prison system could, left entirely to his own devices by state action in violation of the constitution, recover from the disability of ineffective assistance of trial and appellate counsel. Should petitioner's position, that ineffective assistance of trial or appellate counsel, or both, not be deemed to constitute a factor tolling the one year term of limitations, then those individuals who are indigent and incapable of understanding the predicament that State action in violation of the constitution has placed them in (due to reasons such as mental impairment, psychological incapacity, illiteracy, and ignorance of the law), will see their rights to bring a Federal habeas petition suspended, both as a practical matter, and as a matter of law. Just as a person who commits a tort must take his victim as he finds him, the State should be responsible for the harm of it's violation to a defendant's Sixth Amendment rights, even where the incapacity of the defendant aggravates his predicament. To do otherwise would be to hold that only prisoner's who are brilliant and resourceful enough to grasp how the state has defaulted it's Sixth Amendment responsibilities, retain the right to seek re-dress in Federal court for that default. This sort of an interpretation would violate the equal protection clause of the 14th Amendment. If such an exception is not made, then even a mentally incompetent inmate (not merely one who is helpless without legal assistance), whose Sixth Amendment right to the effective assistance of trial counsel was violated would be time barred from bringing such claims, in all cases, where even facially valid claims are discovered after the year has lapsed. Such a conclusion would be fundamentally unfair and violative of the 14th Amendment guarantee.

C. EVEN IF PETITIONER HAS INADVERTANTLY PASSED THE PERIOD OF LIMITATIONS, FEDERAL REVIEW IS NECESSARY TO PREVENT A MISCARRIAGE OF JUSTICE VIOLATIVE OF PETITIOENER'S FUNDAMENTAL LIBERTIES.

The State Supreme Court in SMITH V. CARRIER, SUPRA, 477 U.S. at 537 has recognized a "fundamental miscarriage of justice" exception to the cause and prejudice requirement. It has been noted in ENGLE and reaffirmed in CARRIER, "in appropriate cases the principles of comity and finality that inform the concepts of cause and prejudice 'must yield to the imperatives of correcting a fundamentally unjust incarceration.'" MURRAY V. CARRIER, ante, at 495 91 Led. 2nd 397, quoting, ENGLE V. ISAAC, 456 U.S. at 135, 71 Led. 2nd 783. Accordingly, "where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a Federal habeas corpus court may grant the writ even absence of a showing of cause for the default."

In the present case, constructively, petitioner was deprived of counsel after he was forced to proceed to trial, though he was unable to communicate with his appointed public defender, after his initial, timely request for substitution of counsel, was denied before his trial. Then counsel went on "fictitiously", to represent petitioner, forcing petitioner to be binded to his errors, omissions, and misconduct, against petitioner's will, and in contravention of petitioner's fundamental rights.

Although, the rationale underlying the Supreme Court's decision in FARETTA is not difficult to understand: Put quite simply it is that the State may not, **constitutionally**, prevent a defendant charged with commission of a criminal offense, from controlling his own fate, by forcing on him, counsel who may not present a case which is not consistent with the actual wishes of the defendant-however, petitioner was denied the right in this case, and irretrievable defenses (ie, a motion for a new trial at the trial level) were lost. Appointed counsel refused to move

for a new trial on the grounds of incompetence of counsel at one point, because already he'd determined "I was not incompetent" as he stated to the court, and the court would not recognize petitioner ". . because you have an attorney". Ultimately, Mr. Weis called petitioner a "DUMB NIGGER", and petitioner was still forced to proceed with him.

This court has proper jurisdiction to save petitioner's fundamental liberties.

(FAY V. NOIA, at pp. 859-860, "..The Federal District Court has broad power on habeas corpus to hold an evidentiary hearing and determine the facts. The breadth of the federal courts power of independent adjudication on habeas corpus stems from the very nature of the writ, and conforms with the classic English practice. As put by Mr. Justice Holmes in his dissenting opinion in FRANKLIN V. MAGNUM, (237 U.S . at 348), 'If the petition discloses facts that amount to a loss of jurisdiction in the trial court, jurisdiction could not be restored by any decision above.' It is the historical essence of habeas corpus that it lies to test proceedings so fundamentally lawless that imprisonment to them is not merely erroneous, but void. (also) ..."conventional notions of finality in criminal litigation can not be permitted to defeat the manifest federal policy that federal constitutional rights **shall not be denied** without the fullest opportunity for plenary review."

CONCLUSION

Glaring constitutional error of the first magnitude occurred in petitioner's case. Now the state of California wants to take further advantage of petitioner's utter fecklessness when it comes to the law by enlisting this court in the denial of this petition, because petitioner, inadvertently, may have taken longer than a year evading state created impediments, and exhausting his state remedies, to the state's violation of his

constitutional liberties. As with the wrongdoer that seeks to avoid responsibility for injuries resulting from his wrongful conduct, on theory that his conduct, although reprehensible, only proved to be devastating to plaintiff because of pre-existing infirmities in said plaintiff, the State of California should not be allowed to effectuate a neat and final escape from all responsibility for effective counsel to those who need it most- that category of inmate who is personally unable to understand his substantive rights and the procedural imperatives related to their presentation. Any other finding would mean, in essence, that illiterates, the learning impaired, foreigners, and people with mental or psychological problems, who are essentially without hope of ever being gifted through the help of others with a remedy, will find their rights suspended, where their convictions were obtained in derogation of their right to effective assistance of trial or appellate counsel.

D. STATE'E FAILURE TO FORMALLY ANSWER PETITIONER'S CLAIMS

Petitioner submits that the States choice not to answer to each of petitioner's claims individually, of his petition to this court should be regarded as an admission as "TRUE", as to all grounds. Petitioner should be granted a new trial, and/or whatever other relief this court deems appropriate.

DATED: March 2, 2001

RESPECTFULLY SUBMITTED /s/ H-08159

I, Reginald Chavis, declare as follows:

I am actually innocent. I believe that my constitutional rights to counsel were violated throughout every stage of my criminal proceedings. I was unable to communicate with my appointed public defender Vincent Weis, even before the start of my preliminary examination because of the conflicts stemming from the f. ct that he was insulting me, he would not listen to me, and I felt he needed to listen to me in order for me to have a chance at proving my actual innocence. He was unwanted, by me, and I did not want to risk having him represent me because he said "there's no way in hell you can win this case and anyone who says that you can doesn't know what the hell they are talking about" and he would not hear nothing other. He said this to me after suggesting to me that he could work a plea bargain to get me 14yrs, and I rejected for him to make such an attempt, telling him I'm actually innocent. I was forced to proceed with him anyway and I believe my trial was extraordinarily unfair because of it. I tried to obtain rectification at my criminal proceedings, repeatedly. I stated to the trial court I believed I had "constitutional rights" being denied. After I was convicted and sentenced, I fully informed my appointed appellate counsel, instructing him to pursue counsel claims and he declined and did not do so. He raised his choice of appeal issues, to the High Court of the State, and informed me that he would raise a federal writ and I declined to consent to that, because my counsel claims would not be included. With the measure of education that I had at that point in time, and my layman status, I did not know how to state a meaningful claim, but I made an effort. I was upheld in my efforts to learn how by my state custodians conduct depriving me of materials where I could have meaningful access to the courts. My efforts, and timeliness were further upheld by the many extended lockdowns of the state prisons to which I was detained. I believe the state is responsible if any procedural default has occurred. I believe that it will be a tremendous

miscarriage of justice if I am unable to obtain Federal review of my present illegal incarceration.

I declare under penalty of perjury that the foregoing is true and correct, except for those matters stated on my belief, and as to those matters I believe them to be true.

Executed this day:

Date: March 2, 2001

BY: /s/ H-08159

EXHIBIT 1

State of California Department of Corrections

INMATE/PAROLEE
APPEAL FORM
CDC 802 (12/87)

Location: Institution/Parole Region Log No. Category
1. CSP-SAC 1. 95-03353 10
2. Sac-C 2. Library access-ETO

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME NUMBER ASSIGNMENT UNIT/ROOM NUMBER
Chavis H-08159 PTR.060 C 7115

A. Describe Problem: This inmate is assigned to the above stated position as a seven block (tier tender), with stipulated RDO's being Sun/Mon. I am currently without a hired attorney but, I work pro-per on my criminal case and I am in the process of attempting to pursue a filing of a habeas corpus petition on my criminal conviction. In order to complete my petition it is necessary for me to get into C-facility's law library to research and obtain the required law, points and authorities to validate my filing. My problem is that the law library is closed on Sun/Mon, which, (refer to attachment)

If you need more space, attach one additional sheet.

B. Action Requested: That I be granted use of excused time off in accord to Section 3045.2 (2)(G)(5) of the Title 15, in two hour increments 5 days weekly after finishing my assigned duties, to have reasonable access to the law library as soon as possible.

Inmate/Parolee Signature: /s/ H-08159
Date Submitted: 12-12-95

C. INFORMAL LEVEL (Date Received:_____)
Staff Response: See attached

Staff Signature: See attached
Date Returned to Inmate: _____

D. FORMAL LEVEL
If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

My superior says that he can't grant me ETO. However, in accord to 3045.2 (2)(G)(5) the lieutenant or high authority can do so. Please do so, so that I may continue good programming as per CDC's expectations for me to work an assignment. A-1-A unassign me or change me to a PM assignment A.S.A.P. Thank-you.

Signature: /s/ H-08159
Dated Submitted: 12-19-95

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-TE, Inmate Claim

RECEIVED
DEC 22 1995
CSP-SAC

First Level ___ Granted ___ P. Granted _X_ Denied
___ Other

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: DEC 27 1995 Due Date: _____
Interviewed by: See Attached

Staff Signature: /s/ Title: Sgt.
Dated Completed: JAN 18 1996
Division Head Approved: Signature /s/ Title: Capt
Returned Date to Inmate: JAN 23 1996

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

I am effectively being denied access to the courts at this point, I believe this is illegal and in contravention of my limited civil rights. Please grant me ETO or Re-assign me to a PM assignment.

Signature: /s/ H-08519 Dated Submitted: 2-1-96

Second Level ___ Granted _X_ P. Granted ___ Denied
___ Other

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: FEB 08 1996 Due Date: _____
___ See Attached Letter

Signature: /s/ Dated Completed: FEB 16 1996
J.C. WALKLEY, AWP(A)
Warden/Superintendent Signature: /s/
T. WHITE, WARDEN
Date Returned to Inmate: FEB 19 1996

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

For the Director's Review, submit all documents to:

Director of Corrections
P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: ___ Granted ___ P. Granted
___ Denied ___ Other
___ See Attached Letter

Date: _____

Inmate Appeal Continued

incidently are also my assigned RDO's. The library closes at about 1:45 p.m. during it's open days of the week, and this inmate is not permitted to be relieved from duty until 1:30 p.m. I have no reasonable access to the law library. I have discussed this problem with c/o Fender who supervises me, and he advises me that he can not relieve me from duty to go to the library regardless of the circumstances.

I asked that I be granted use of (ETO) in accord to section 3045.2 (2)(G)(5) of the title 15, which indicates that (ETO) may be used for "non-routine recreation and entertainment activities" and c/o Fender denied me that request.

This inmate can not get a PLU status without filing the proper documents to the court and, I can not file the proper documents to the court without reasonable access to the law library for required case law, points and authorities.

I have tried to convieniently resolve this situation in several ways before taking this action:

(1) I have asked and talked to c/o Fender, my supervisor.

(2) I have written the law librarian and asked for PLU status as a result of my sitution, to which I never received a response.

(3) I also submitted a Job Change application which was approved over a month ago but never occurred for reasons unknown.

To Second Level

My supervisor says that he can not grant me ETO for use of the access to law library however, in accord to the above cited title 15 section the lieutenant and higher authority can. I would request that it be granted of me so that I can get my legal business handled and still conform to CDC's programming of continuing to work my assignment. If I can not be granted ETO, please unassign me from this position to A-1-A unassigned or change me to a

State of California

MEMORANDUM

FORMAL RESPONDENT c/o Fender

Date: 12-13-95

To: Inmate Chavis H-08159
(NAME) (CDC#)

From: California State Prison-Sacramento, Represa 95671

Subject: INFORMAL LEVEL APPEAL
UNIT LOG # 1295 C-921

Appeal is (indicate one) GRANTED / PARTIALLY GRANTED / **DENIED** / OTHER

On 12-14-95 you were interviewed by c/o Fender regarding the following issue(s):

You requested ETO to go to the law library.

An investigation of your complaint revealed the following:

I cannot grant ETO for you to go to the law library.

The following person(s) was/were interviewed in the course of the investigation:

_____ _____
Respondent Signature Printed Name

State of California

MEMORANDUM

Date: January 12, 1996

To: Inmate Chavis (H-08159)

From: California State Prison-Sacramento, Represa 95671

Subject: APPEAL LOG # SAC-C-95-03353 (FIRST LEVEL RESPONSE)

SUMMARY OF APPEAL

You wish to utilize the services of the C Facility Legal Library. Unfortunately, the library hours of operation coincide with your assigned work hours. You are requesting use of ETO time during your work hours to go to the library.

SUMMARY OF INVESTIGATION

On January 12, 1996, you were interviewed and an investigation was conducted by this writer regarding the above-noted appeal. During my investigation I found that use of ETO time is not an option for you in this circumstance. California Code of Regulations, Title 15, Section #3045.2 specifies authorized use of ETO time. Access to the Legal Library is not listed, nor is it considered a "non-routine recreation and entertainment" activity, as you suggest.

You best option at this point is to request a work assignment change that would allow access to the Legal Library as a GLU.

APPEAL RESPONSE

For the reasons cited above your appeal is DENIED.

/s/
B. MCJUNKIN
Program Sergeant, 2/W
C Facility

BM:lj

RECEIVED
JAN 17 1996
CSP-SAC
APPEALS OFFICE

SUPPLEMENT PAGE

RE: California State Prison-Sacramento (SAC)
Second Level Reviewer's Response
Appeal Log #: SAC-C-95-03353
Date: February 8, 1996

/s/
FEB 16 1996

Inmate: Chavis, H-085159

APPEAL ISSUE: (Modified)
Legal

APPEAL DECISION:

PARTIALLY GRANTED (MODIFICATION ORDER)

APPEAL RESPONSE

K. L. Markey, Appeals Coordinator, was assigned to investigate your appeal at the Second Level of Review.

All submitted documentation and supporting arguments have been considered, including the interview conducted at the First Level of Review (FLR). Additionally, a thorough investigation has been conducted regarding the claim presented by you and evaluated in accordance with SAC's Operational Procedures (OP's) and the California Code of / Regulations (CCR), Title 15.

SUMMARY OF APPEAL

You contend that you wish to utilize Excused Time Off (ETO) to go to the Law Library, or you wish to receive a job change to a Third Watch position in order to accommodate your Law Library access.

SUMMARY OF INVESTIGATION

The Department's rule regarding use of ETO is contained in the California Code of Regulations (CCR), Title 15, Section 3045.2.

The First Level Reviewer has informed you that the use of ETO does not include an inmate's desire to utilize the Law Library. However, you will be referred to the Unit Classification Committee (UCC) who shall review your job assignment, and make a determination concerning your placement in a Third Watch work position.

APPEAL RESPONSE

For the reasons cited above, your appeal is **PARTIALLY GRANTED**. The Appeal's Office will prepare a **MODIFICATION ORDER** instructing the C-Facility Captain to have you appear before the Unit Classification Committee (UCC). UCC will determine whether you can be assigned to a Third Watch work position to accommodate your needs for use of the Law Library.

/s/
THEO WHITE
Warden

TW:km
cc: Inmate Appeals Unit
Central File

EXHIBIT 2

SUPREME COURT OF CALIFORNIA

ROBERT F. WANDRUFF
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT
1 December 1999

Reginald A. Chavis, H-08159
P.O. Box 5002
Calipatria, CA 92233

Re: S065691 - In re Chavis on Habeas Corpus

Dear Sir:

No action may be taken on your motion to vacate, received today in the above-entitled matter. The order of this court filed April 29, 1998, denying your petition for writ of habeas corpus was final forthwith and may not be amended or reconsidered. Please rest assured, however, that the entire court considered the petition and the contentions made therein and the denial expresses the court's decision in this matter.

If you wish to file a new petition for writ of habeas corpus, I have enclosed the form approved by the Judicial Council.

Very truly yours,

ROBERT F. WANDRUFF
Court Administrator and
Clerk of the Supreme Court
/s/
By: John C. Rossi
Assistant Clerk-Administrator

JCR:
Enclosures

VERIFICATION

STATE OF CALIFORNIA
COUNTY OF IMPERIAL

(C.C.P. SEC. 446 & 2015.5; 28 U.S.C. SEC. 1746)

I, Reginald Chavis DECLARE UNDER THE PENALTY OF PERJURY THAT: I AM THE Petitioner IN THE ABOVE ENTITLED ACTION; I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS March DAY OF 02, 2001, AT CALIPATRIA STATE PRISON, CALIPATRIA, CALIFORNIA 92233-5002

(SIGNATURE) /s/
(DECLARANT/PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC. 1013(a) & 2015.5; 28 U.S.C. SEC. 1746)

I, Phillip N. Thompson, AM A RESIDENT OF CALIPATRIA STATE PRISON, IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA; I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM/AM NOT A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX 5002, CALIPATRIA, CALIFORNIA 92233-5002

ON March 2, 2001, I SERVED THE FOREGOING:

Petitioner's Opposition To Respondents Motion To Dismiss Petition For Habeas Corpus.
(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY(S) HEREIN BY PLACING A TRUE COPY(S) THEREOF, ENCLOSED IN A SEALED ENVELOPE(S), WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED AT CALIPATRIA STATE PRISON, CALIPATRIA, CALIFORNIA 92233-5002

Arnold O. Overoye
Senior Assistant Attorney General
State Bar No. 37631
1300 I Street Suite 125
PO Box 944255
Sacramento, California 94244-2550

United States District Court
For Eastern District of California
501 I Street, STE 4-200
Sacramento, California 95814-2322

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: 3/02/01, 2001 /s/
(DECLARANT/PRISONER)

BILL LOCKYER
Attorney General of the State of California
DAVID P. DRULINER
Chief Assistant Attorney General
ROBERT R. ANDERSON
Senior Assistant Attorney General
ARNOLD O. OVEROYE
Senior Assistant Attorney General
State Bar No. 37631
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5282
Fax: (9 16) 324-2960
Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REGINALD CHAVIS, Petitioner,	)	CIV S-00-2496 WBS GGH P
v.	)	**RESPONDENT'S REPLY TO**
SYLVIA GARCIA,	)	**PETITIONER'S OPPOSITION**
Respondent.	)	**TO RESPONDENT'S MOTION**
	)	**TO DISMISS**

INTRODUCTION

On August 30, 2000, Petitioner filed a petition for writ of habeas corpus. On December 14, 2000, this Court ordered Respondent to file a response to the petition. On February 13, 2001, Respondent filed a motion to dismiss because the petition had been filed beyond the one-year statute of limitations contained in 28 U.S.C., section 2244(d)(1) and (2). On March 7, 2001, Petitioner filed an opposition to Respondent's motion to dismiss. Respondent hereby replies to the allegations of

Petitioner's opposition.

In Petitioner's opposition he claims that: (1) state-created impediments prevented timely filing; and (2) that he is innocent. Petitioner's claims are without merit.

Petitioner was convicted on September 6, 1991. Exh. A Motion. The California Court of Appeal, Third Appellate District affirmed Petitioner's conviction on July 30, 1992. Exh. B. to Motion. On September 2, 1992, Petitioner filed a petition for review with the California Supreme Court. On October 28, 1992, the petition was denied. Exh. C to Motion. Petitioner's direct state appeal then became final on January 26, 1993, after the ninety day period in which to file a petition for writ of certiorari with the United States Supreme Court expired. *Bowen v. Roe*, 188 F.3d 1157, 1158-1159 (9th Cir. 1999); *Rhine v. Boone*, 182 F.3d 1153, 155 (10th Cir. 1999). Therefore, Petitioner's federal petition was due within one year after the April 24, 1996, enactment of the AEDPA, plus all applicable tolling. *Calderon v. United States Dist. Court (Beeler)*, 128 F.2d 1283, 1286 (9th Cir. 1997).

ARGUMENT

After Petitioner's direct state appeal was final, Petitioner filed his first collateral action on May 14, 1993, in the Sacramento County Superior Court. On July 30, 1993, the petition was denied. Exh. D to Motion. Petitioner thereafter delayed more than one year, and on August 22, 1994, filed a habeas petition in the California Court of Appeal, Third Appellate District. On September 29, 1994, the petition was denied. Since both of these collateral actions were filed *prior* to the enactment of the AEDPA, neither action provides Petitioner with any tolling. *Hill v. Keane*, 984 F.Supp. 157, 159 (E.D.N.Y. 1997).

Thereafter, Petitioner did not file any state collateral actions until November 10, 1997, when he filed a petition for writ of habeas corpus in the California Supreme Court. That petition does not provide Petitioner with tolling since it was filed *after*

the statute of limitations expired. *Green v. White*, 223 F.3d 1001 (9th Cir. 2000); *Webster v. Moore*, 199 F.3d 1256, 1259 (11th Cir. 2000); *Blouin v. Headley*, 70 F.Supp.2d 282, 285-286 (S.D.N.Y. 1999); *Sorce v. Artuz*, 73 F.Supp.2d 292, 294. In his opposition, Petitioner claims that during 1995 through 1996, due to his full-time prison employment, he did not have access to the law library because the library was closed during his off work hours.[1/] Opp., pp. 4-6. In December of 1995, Petitioner sought to change this situation through the inmate appeal process. On March 5, 1996, after an investigation by the institution. Petitioner was given a different job assignment which would allow him proper access to the law library. Exh. A.

However, even after Petitioner gained access to legal materials, he still delayed approximately eighteen months before he filed a state collateral action on November 10, 1997, with the California Supreme Court. On April 29, 1998, the petition was denied. Exh. E to Motion. Petitioner then delayed another eight months before attempting to file a habeas petition in the Sacramento County Superior Court on December 15, 1998.[2/] Exh. F. to Motion. On January 25, 1999, Petitioner filed a third petition for writ of habeas corpus with the Sacramento County Superior Court, case number 99F00573. On February 24, 1999, the petition was denied. Exh. G to Motion. On December 17, 1999, Petitioner filed a second petition for writ of habeas corpus with the California Supreme Court. On February 24, 1999, the petition was denied. Exh. H to Motion.

Petitioner explains his further delay in pursuing his state claims by another state-created impediment, i.e., institutional lockdowns prevented law library access. Opp., pp. 6-8.

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1. During this time period, Petitioner was housed at California State Prison - Sacramento.

2. On January 5, 1999, the Sacramento County Superior Court returned the petition to Petitioner because it was not on a proper California Judicial Council form.

However, Respondent has obtained certain pages of a Handbook Guide to Library Procedures from the California State Prison - Sacramento, which provides the procedures taken to provide prison inmates with legal materials when lockdowns are in place. Exh. B. Through a "paging system" inmates are allowed to receive copies of library materials during prison lockdowns. Based on this system, it is clear that Petitioner was not prevented from using law library materials to prepare his state collateral actions. Moreover, run of the mill claims such as lockdowns preventing timely filing are not considered extraordinary circumstances for equitable tolling. *Rosada v. Schomig*, 64 F.Supp.2d 790, 796 (C.D.Ill 1999). Alleged impediments including library access, lockdowns, and lost transcripts were rejected where petitioner had five years and failed to show actual interference throughout the year. *Akins v. U.S.*, 204 F.3d 1086 (11th Cir. 2000). The Constitution does not guarantee unlimited access to the law library and an inmate having to wait for his or her turn does not deny access to the courts. *Lindquist v. Idaho Board of Corrections*, 776 F.2d 851, 858 (9th Cir. 1985); *Miller v. New Jersey Department of Corrections*, 145 F.3d 616, 618-619 (3rd Cir. 1998); *Miller v. Marr*, 141 F.3d 976, 978 (10th Cir. 1998). A petitioner's failure to show diligent pursuit of federal claims may also be invoked in claims of prison adversities generally. They include prison lockdowns which were rejected as an excuse in *U.S. v. Van Poyck*, 980 F.Supp. 1109 (C.D. Cal. 1997) where a petitioner made no showing how alleged multiple institutional lockdowns interfered with the year available to file. Indeed, institutional lockdowns have been recognized not as an extraordinary circumstance but as a routine restriction on prison life which a prisoner must take into account. *Akins v. Harris*, 1999 W.L. 13719 (N.D. Cal. 1999).

Thus, Petitioner has failed to overcome the statute of limitations. Petitioner had the entire one-year period between April 24, 1996, when the AEDPA was enacted, and the expiration of the statute of limitations on April 23, 1997, to

timely file state collateral actions. Petitioner failed to timely file and, therefore, all his collateral actions filed after the April 23, 1997, date do not provide Petitioner with tolling since the statute of limitations had already expired. *Webster v. Moore*, 199 F.3d 1256, 1259 (11th Cir. 2000); *Blouin v. Headley*, 70 F.Supp.2d 282, 285-286 (S.D.N.Y. 1999); *Sorce v. Artuz*, 73 F.Supp.2d 292, 294.

Moreover, Petitioner's further claims of not knowing the proper legal claims to pursue, the time it took for him to obtain a copy of a *Marsden* hearing transcript[3], and being moved from California State Prison - Sacramento to Calipatria State Prison also contributed to the delay. Deficiencies related to a petitioner's lack of knowledge or expertise have generally been rejected. *Smith v. McGinnis*, 208 F.3d 13, 18 (2nd Cir. 2000); *Kibler v. Walters*, 197 F.3d 1251, 1252 (9th Cir. 2000) (lack of knowledge of state law not cause); *Turner v. Johnson*, 177 F.3d 390, 392 (5th Cir. 1999) (lack of familiarity with process and lack of representation, regardless of illiteracy); *Fisher v. Johnson*, 174 F.3d 710, 714 (5th Cir. 1999) (ignorance of law no excuse); *Eisermann v. Penrosa*, 33 F.Supp.2d 1269, 1273 (D.Haw. 1999) (lack of legal expertise); *Rose v. Dole*, 945 F.2d 1331, 1335 (6th Cir. 1991) and *Richard v. Mileski*, 662 F.2d 65, 71, n. 10 (D.C. Cir. 1981) (ignorance of the law); *Fadayiro v. U.S.*, 30 F.Supp.2d 772, 781 (D. N.J> 1998) (ignorance of the law no excuse); *Moore v. Hawley*, 7 F.Supp.2d 901, 904 (E.D. Mich. 1998) (ignorance of the law not excusable neglect); *Miller v. Marr* at 978. (petitioner didn't know about statute).

Lastly, Petitioner's claim of innocence is actually a claim of ineffective assistance of counsel, i.e., but for counsel's ineffective representation, Petitioner would have been found not guilty. In any event, in raising a claim of innocence, a petitioner must go beyond demonstrating doubt about his guilt, but must affirmatively prove his innocence. *Lorensten v. Hood*, 223 F.3d 950, 954 (9th Cir. 2000); *Jackson v. Calderon*, 211 F.3d 1148,

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3. *People v. Marsden*, 2 Cal.3d 118 (1970).

1165 (9th Cir. 2000). Petitioner's ineffective assistance of counsel claim does not show actual innocence; rather, he must independently establish factual innocence to have his claim heard. *Schlup v Delo*, 513 U.S. 298, 327-329. Petitioner had a jury trial and was found guilty of attempted murder. A petitioner "must show that is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." *Schlup v. Delo*, 513 U.S. 298, 327-329. Again, Petitioner has made no showing of his innocence.

Petitioner's federal petition for writ of habeas corpus must be dismissed.

Dated: March 22,2001

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California
DAVID P. DRULINER
Chief Assistant Attorney General
ROBERT R. ANDERSON
Senior Assistant Attorney General

/s/
ARNOLD O. OVEROYE
Senior Assistant Attorney General

Attorneys for Respondent

EXHIBIT A

CSP - SACRAMENTO
INMATE APPEAL OFFICE

MODIFICATION ORDER

TO: AWP C-Facility Captain
DATE: February 16, 1996
INMATE: Chavis
NUMBER: H-08159
APPEAL LOG # SAC: C-95-03353
OTHER: Change Work Assignment
MOD ORDERED BY: Second Level
DUE DATE: March 16, 1996

The inmate appeal listed above has been PARTIALLY GRANTED/GRANTED. Please review the attached appeal response and take necessary action to comply by the due date shown above.

SPECIFIC ACTION REQUIRED: Have inmate appear before UCC and determine if he can be assigned to, a Third Watch job assignment to make it possible for him to go to the Law Library during the day.

Upon completion, please make the appropriate notation at the bottom of this form, attach supporting documentation, and return it to the Inmate Appeals Office so it may be recorded and the file closed on this appeal.

/s/
K.L. Markey
APPEALS COORDINATOR
INMATE APPEALS OFFICE

DATE OF ACTION: 3-5-96

ACTION TAKEN: UCC committee removed "s" from his current assignment as 7 Block Porter. Placed "s" on 3S/WL per request, recommending PM Porter position. "s" retains his A 1/A until reassigned.

PERSON TAKING ACTION: /s/

SIGNATURE: /s/ TITLE: CCI
M.A./Geddis

APPEALS OFFICE PROCESSING
cc: c-file
chief, Inmate Appeals Branch (3rd Level orders)

MAR 05 1996

SUPPLEMENT PAGE

RE: California State Prison-Sacramento (SAC)
Second Level Reviewer's Response
Appeal Log #: SAC-C-95-03353
Date: February 8, 1996

/s/
Inmate: Chavis, H-085159 FEB 16 1996

APPEAL ISSUE: (Modified)
Legal

APPEAL DECISION:

PARTIALLY GRANTED (MODIFICATION ORDER)

APPEAL RESPONSE

K. L. Markey, Appeals Coordinator, was assigned to investigate your appeal at the Second Level of Review.

All submitted documentation and supporting arguments have been considered, including the interview conducted at the First Level of Review (FLR). Additionally, a thorough investigation has been conducted regarding the claim presented by you and evaluated in accordance with SAC's Operational Procedures (OP's) and the California Code of / Regulations (CCR), Title 15.

SUMMARY OF APPEAL

You contend that you wish to utilize Excused Time Off (ETO) to go to the Law Library, or you wish to receive a job change to a Third Watch position in order to accommodate your Law Library access.

SUMMARY OF INVESTIGATION

The Department's rule regarding use of ETO is contained in the California Code of Regulations (CCR), Title 15, Section 3045.2.

The First Level Reviewer has informed you that the use of ETO does not include an inmate's desire to utilize the Law Library. However, you will be referred to the Unit Classification Committee (UCC) who shall review your job assignment, and make a determination concerning your placement in a Third Watch work position.

CALIFORNIA STATE PRISON - SACRAMENTO
APPEAL LOG # SAC-C-95-03353
CHAVIS, H-08159
February 8, 1996
Page 2

APPEAL RESPONSE

For the reasons cited above, your appeal is **PARTIALLY GRANTED**. The Appeal's Office will prepare a **MODIFICATION ORDER** instructing the C-Facility Captain to have you appear before the Unit Classification Committee (UCC). UCC will determine whether you can be assigned to a Third Watch work position to accommodate your needs for use of the Law Library.

/s/
THEO WHITE
Warden

TW:km
cc: Inmate Appeals Unit
Central File

State of California Department of Corrections

INMATE/PAROLEE
APPEAL FORM
CDC 802 (12/87)

Location:	Institution/Parole Region	Log No.	Category
1.	CSP-SAC	1. 95-03353	10
2.	Sac-C	2.	Library access-ETO

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Chavis	H-08159	PTR.060	C 7115

A. Describe Problem: This inmate is assigned to the above stated position as a seven block (tier tender), with stipulated RDO's being Sun/Mon. I am currently without a hired attorney but, I work pro-per on my criminal case and I am in the process of attempting to pursue a filing of a habeas corpus petition on my criminal conviction. In order to complete my petition it is necessary for me to get into C-facility's law library to research and obtain the required law, points and authorities to validate my filing. My problem is that the law library is closed on Sun/Mon, which, (refer to attachment)

If you need more space, attach one additional sheet.

B. Action Requested: That I be granted use of excused time off in accord to Section 3045.2 (2)(G)(5) of the Title 15, in two hour increments 5 days weekly after finishing my assigned duties, to have reasonable access to the law library as soon as possible.

Inmate/Parolee Signature: /s/ H-08159
Date Submitted: 12-12-95

C. INFORMAL LEVEL (Date Received:_____)
Staff Response: See attached

Staff Signature: See attached
Date Returned to Inmate: _____

D. FORMAL LEVEL
If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

My superior says that he can't grant me ETO. However, in accord to 3045.2 (2)(G)(5) the lieutenant or high authority can do so. Please do so, so that I may continue good programming as per CDC's expectations for me to work an assignment. A-1-A unassign me or change me to a PM assignment A.S.A.P. Thank-you.

Signature: /s/ H-08159
Dated Submitted: 12-19-95

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-TE, Inmate Claim

RECEIVED
DEC 22 1995
CSP-SAC

First Level ___ Granted ___ P. Granted _X_ Denied
___ Other

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: DEC 27 1995 Due Date: _____
Interviewed by: See Attached

Staff Signature: /s/ Title: Sgt.
Dated Completed: JAN 18 1996
Division Head Approved: Signature /s/ Title: Capt
Returned Date to Inmate: JAN 23 1996

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

I am effectively being denied access to the courts at this point, I believe this is illegal and in contravention of my limited civil rights. Please grant me ETO or Re-assign me to a PM assignment.

Signature: /s/ H-08519 Dated Submitted: 2-1-96

Second Level ___ Granted _X_ P. Granted ___ Denied
___ Other

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: FEB 08 1996 Due Date: _____
___ See Attached Letter

Signature: /s/ Dated Completed: FEB 16 1996
J.C. WALKLEY, AWP(A)
Warden/Superintendent Signature: /s/
T. WHITE, WARDEN
Date Returned to Inmate: FEB 19 1996

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

For the Director's Review, submit all documents to:

Director of Corrections
P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: ___ Granted ___ P. Granted
___ Denied ___ Other
___ See Attached Letter

Date: _____

Inmate Appeal Continued

incidently are also my assigned RDO's. The library closes at about 1:45 p.m. during it's open days of the week, and this inmate is not permitted to be relieved from duty until 1:30 p.m. I have no reasonable access to the law library. I have discussed this problem with c/o Fender who supervises me, and he advises me that he can not relieve me from duty to go to the library regardless of the circumstances.

I asked that I be granted use of (ETO) in accord to section 3045.2 (2)(G)(5) of the title 15, which indicates that (ETO) may be used for "non-routine recreation and entertainment activities" and c/o Fender denied me that request.

This inmate can not get a PLU status without filing the proper documents to the court and, I can not file the proper documents to the court without reasonable access to the law library for required case law, points and authorities.

I have tried to convieniently resolve this situation in several ways before taking this action:

(1) I have asked and talked to c/o Fender, my supervisor.

(2) I have written the law librarian and asked for PLU status as a result of my sitution, to which I never received a response.

(3) I also submitted a Job Change application which was approved over a month ago but never occurred for reasons unknown.

To Second Level

My supervisor says that he can not grant me ETO for use of the access to law library however, in accord to the above cited title 15 section the lieutenant and higher authority can. I would request that it be granted of me so that I can get my legal business handled and still conform to CDC's programming of continuing to work my assignment. If I can not be granted ETO, please unassign me from this position to A-1-A unassigned or change me to a

SUPPLEMENT PAGE

RE: California State Prison-Sacramento (SAC)
Second Level Reviewer's Response
Appeal Log #: SAC-C-95-03353
Date: February 8, 1996

Inmate: Chavis, H-085159

/s/
FEB 16 1996

APPEAL ISSUE: (Modified)
Legal

APPEAL DECISION:

PARTIALLY GRANTED (MODIFICATION ORDER)

APPEAL RESPONSE

K. L. Markey, Appeals Coordinator, was assigned to investigate your appeal at the Second Level of Review.

All submitted documentation and supporting arguments have been considered, including the interview conducted at the First Level of Review (FLR). Additionally, a thorough investigation has been conducted regarding the claim presented by you and evaluated in accordance with SAC's Operational Procedures (OP's) and the California Code of / Regulations (CCR), Title 15.

SUMMARY OF APPEAL

You contend that you wish to utilize Excused Time Off (ETO) to go to the Law Library, or you wish to receive a job change to a Third Watch position in order to accommodate your Law Library access.

SUMMARY OF INVESTIGATION

The Department's rule regarding use of ETO is contained in the California Code of Regulations (CCR), Title 15, Section 3045.2.

The First Level Reviewer has informed you that the use of ETO does not include an inmate's desire to utilize the Law Library. However, you will be referred to the Unit Classification Committee (UCC) who shall review your job assignment, and make a determination concerning your placement in a Third Watch work position.

CALIFORNIA STATE PRISON - SACRAMENTO
APPEAL LOG # SAC-C-95-03353
CHAVIS, H-08159
February 8, 1996
Page 2

APPEAL RESPONSE

For the reasons cited above, your appeal is **PARTIALLY GRANTED**. The Appeal's Office will prepare a **MODIFICATION ORDER** instructing the C-Facility Captain to have you appear before the Unit Classification Committee (UCC). UCC will determine whether you can be assigned to a Third Watch work position to accommodate your needs for use of the Law Library.

/s/
THEO WHITE
Warden

TW:km
cc: Inmate Appeals Unit
Central File

State of California

MEMORANDUM

Date: January 12, 1996

To: Inmate Chavis (H-08159)

From: California State Prison-Sacramento, Represa 95671

Subject: APPEAL LOG # SAC-C-95-03353 (FIRST LEVEL RESPONSE)

SUMMARY OF APPEAL

You wish to utilize the services of the C Facility Legal Library. Unfortunately, the library hours of operation coincide with your assigned work hours. You are requesting use of ETO time during your work hours to go to the library.

SUMMARY OF INVESTIGATION

On January 12, 1996, you were interviewed and an investigation was conducted by this writer regarding the above-noted appeal. During my investigation I found that use of ETO time is not an option for you in this circumstance. California Code of Regulations, Title 15, Section #3045.2 specifies authorized use of ETO time. Access to the Legal Library is not listed, nor is it considered a "non-routine recreation and entertainment" activity, as you suggest.

You best option at this point is to request a work assignment change that would allow access to the Legal Library as a GLU.

APPEAL RESPONSE

For the reasons cited above your appeal is DENIED.

/s/
B. MCJUNKIN
Program Sergeant, 2/W
C Facility

BM:lj

RECEIVED
JAN 17 1996
CSP-SAC
APPEALS OFFICE

State of California

MEMORANDUM

FORMAL RESPONDENT c/o Fender

Date: 12-13-95

To: Inmate Chavis H-08159
(NAME) (CDC#)

From: California State Prison-Sacramento, Represa 95671

Subject: INFORMAL LEVEL APPEAL
UNIT LOG # 1295 C-921

Appeal is (indicate one) GRANTED / PARTIALLY GRANTED / **DENIED** / OTHER

On 12-14-95 you were interviewed by c/o Fender regarding the following issue(s):

You requested ETO to go to the law library.

An investigation of your complaint revealed the following:

I cannot grant ETO for you to go to the law library.

The following person(s) was/were interviewed in the course of the investigation:

_____ _____
Respondent Signature Printed Name

EXHIBIT B

California State Prison - Sacramento
Education Department

HANDBOOK GUIDE TO LIBRARY PROCEDURES

Revised in August, 2000

Developed by

D. McCargar
Senior Librarian

D. Hoffman
Supervisor of Academic Instruction

J. Bracy
Supervisor of Correctional Education Programs

HANDBOOK GUIDE TO LIBRARY PROCEDURES

A. LIBRARY SERVICE PROVIDERS

The full range of library services mandated by Department Regulations is provided by SAC Library staff, 5 days per week, and custody staff should not feel compelled to augment these services. NO ONE outside the Education Department is authorized to provide library services to inmates that have been denied by library staff, regardless of the HARD SELL they may get from the inmate. If an inmate request has been denied by the librarian, there IS a legitimate rationale for the denial. (see below.) Often the rationale for emergency library service is a court deadline. All court deadlines for incarcerated litigants have a grace period of at least 10 days, and, further, no inmate need miss a deadline due to lack of multiple copies, because the

original may be filed alone to meet any deadline. Failure to gain physical access for legal research is an unfounded complaint because the courts have approved paging as an alternative to physical access. When custody staff encounter an inmate unwilling to accept a negative response from the library, after library hours, the only action that should be taken by custody staff is to guarantee that library staff are aware of the problem early on the next library working day. The problem may then be reconsidered and/or an interview at the cell or in a block office can be scheduled with the Sr. Librarian.

Source: DOM Sections 53060, 14010.21
SAC DOM Supplements, 53060, 14010.21
CCR Title 15 3120-3122

B. PAGING SYSTEM

Paging is the alternative to physical access during a lockdown or other restrictions upon inmate movement. Inmates may request a LOAN of photocopies of any circulating materials available inside the library through the paging system, by completing a request form and sending it to the library. The paged items (limit of 3 items at a time) are then sent to the inmate at his housing for use in the cell, for up to 30 days. Additional paged items are available, 3 at a time, without limit, as long as all previously paged items have been returned first. (See attached paging request and paging example handout.)

Pickup and Delivery of Paging

Custody staff may, at their own discretion, help to speed the delivery of library services in a lockdown situation by personally delivering an inmate's request for any library service, and/or picking up same upon completion, when possible. The usual delivery and return is done via institution and facility mail runs, and usually does not take more than a

day or two. Each library has a mail slot in the respective Facility Watch Office as well as a locked box near the library entrance, and all library requests from the blocks should be placed in either receptacle, to avoid the delay of routing through the mailroom. (Only outgoing inmate legal mail to a destination off grounds or mail for another Facility should be placed in institutional mailbags.

Source: DOM Section 53060.10
SAC DOM Supplement 53060.10

C. LEGAL COPIES

The Institution has an obligation to the taxpayers of this state to avoid copying unnecessary and prohibited materials. It is the responsibility of the Sr. Librarian, under the supervision of the SAC Education Department, to ensure that no copies of prohibited materials are made at state expense. All materials submitted for copying may be closely examined, at the discretion of the Librarian, to verify exhibit materials, determine whose material is being copied, and otherwise to determine acceptability for copying.

An inmate with an acute concern for confidentiality (doesn't want anyone to read his legal documents) will be advised to seek copies off grounds or file only his original without any copies, explaining to the courts his concern and his failure to provide additional copies. This option places no liability upon the Institution in the event of loss in the mails, as examination by the librarian is fundamental to protecting the interests of the state. An inmate who will allow only the librarian to examine his confidential material, objecting to any exposure to an inmate library clerk, may request special handling by the librarian. Such a request will involve a 24 hour turnaround, with the result that the copies will not be completed the same day the request is received.

Source: SAC DOM Supplement 14010.21

1. Number of Copies

Inmates are only entitled to multiple copies of "new filings" destined for a named court in the quantity required by that court. The number of copies required by various courts for various documents is constantly updated by the Sr. Librarian, and is posted near the copier in each library (see attached, Numbers of Copies document).

Source: DOM Section 14010.21.4
SAC DOM Supplement 14010.2 1
SAC "Numbers of Copies for Legal Documents"

CSP-SAC MINIMUM CAMP
LIBRARY PAGING SERVICES

Minimum Camp inmates may request both legal and leisure reading materials from the Maximum Security (GP) Facility libraries, on temporary loan only. 2 Leisure reading books may be requested at a time, by author or title or subject for a 2 week loan period. A $5.00 fee is charged in addition to list price for any book lost or damaged.

Because law books may not be circulated, only a copy of legal materials can be paged, and the request must be very specific. Case law, statutes, department and institution regulations, and legal research handbooks may be paged in 30 page increments using a paging form, available at the watch office or your library.

1) A maximum of three (3) items, of up to 30 pages each, may be paged at a time. Once these are returned, the inmate may borrow 3 more items, over and over, as necessary. The borrowing period is 2 weeks. Be advised that a trust charge can follow you onto the streets, if necessary.

2) Inmates accepting paged legal materials will sign a trust withdrawal form in the amount of $11 for each item, the amount charged if the item is lost, damaged or returned incomplete.

3) Inmates may not keep any paged materials (state property) except blank legal and institutional forms.

4) All requests will be filled ASAP, the same day received.

5) Requests requiring legal research on the part of library staff may be returned for the inmate to simplify or explain in more detail, and will be subject to delay. Please see paging

examples below.

6) All requests must provide sufficient accurate detail to be located by library staff. If you don't know for sure what you want, if you can't accurately describe it, we won't be able to find it.

PAGING REQUEST EXAMPLES

1. **"Please send FEDERAL RULES/CIVIL PROCEDURE, 42 USCA 1983 with case law annotations"**

This request involves 2 volumes, and only the statute itself would be paged. To get any case Annotations, you must select a specific topic or subject heading, see #2 below.

2. **"Please send annotations at 42 USCA 1983"**

This request fails to indicate an area of interest, such as "good faith defense" or "length of confinement", etc. All the annotations of this section would be several hundred pages long. In this case, the library will first send a copy of the contents pages for a US Code Title & Section, with annotations listed by numbered subject areas, from which the inmate can then select his area of interest and resubmit a more specific request.

3. **"Please send Plessy v Ferguson, I don't know the cite"**

This request leaves out the "venue". The court, thus the law set in which the case is published must be named, as well as the full and CORRECTLY SPELLED case name, if the citation is unknown. A case can be found by name if spelled correctly AND the court or venue is provided. The year the case was adjudicated will also help. The more data you can provide to narrow our search for you, the faster the delivery of your paging. [correct example: Plessy v Ferguson (1989) (CA) (case)]

4. **"Please send the green book about criminal law"**

This request is inadequate. If your are doing your own legal research, you must develop good study methods. Take careful notes of the items you find of use in the library, write down the titles, section numbers, page numbers, anything and everything about any material that you may want to find again, or that you may have to ask someone else to find for you. (correct example: Author-Title)

5. **"Please send 114 S CT 2364, Heck v Humphrey"**

This request is inadequate, because the Library does not have the law set represented by "S CT", the abbreviation for West's SUPREME COURT REPORTER. Make sure your request has all parallel citations included. For Federal cases this means "L ED 2d" or just "L Ed" which are the abbreviations for SUPREME COURT REPORTS, LAWYER'S EDITION 2nd (or 1st), the federal case law set used by SAC libraries. The library can usually find the parallel citation, but it will delay your request, just as it will delay your own research in the library, since the case can ONLY be found at SAC by using the parallel citation from the Lawyer's Edition set. (correct example: Heck v Humphrey 128 Cal.2nd 620)

6. **"Please send the CALIFORNIA STATE PRISONER'S HANDBOOK"**

This request is for an entire book and cannot be filled as is. You must select a specific chapter or name a subject of interest. The contents pages of this volume and any other book may be requested first, to help you find the section or sections you need. (correct example: contents/index to same)

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***Reginald Chavis v. Sylvia Garcia***
No.: **CIV S-00-2496 WBS GGH P**
I declare:
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 22,2001, I served the attached **RESPONDENT'S REPLY TO PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550, addressed as follows:

REGINALD CHAVIS
H-08159
Calipatria State Prison
P.O. Box 5002
Calipatria, CA 92233-5002

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 22,2001, at Sacramento, California.

_____
Signature